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CENSAT AGUA VIVA Amigos de la Tierra Colombia

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Does Cerrejón always win?

Between corporate impunity for human rights violations and the search for comprehensive reparation in times of transition

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Introduction

“Just like all the judgements issued against the company, they don’t change anything...”
Misael Socarrás, Wayuu community leader

Numerous research studies, technical reports, documentaries and public accusations have exposed the systematic violation of the human rights of the Wayuu and Afro-descendant communities in La Guajira, Colombia. Many of these violations are linked to the mining activities of the company Carbones del Cerrejón Limited, which is owned by Glencore. Carbones del Cerrejón operates Latin America’s largest open-pit coal mine and has been the subject of multiple court rulings by different judicial bodies, including the Colombian High Courts, and of declarations made by the United Nations (UN), European parliamentarians and international organizations.

This report aims to denounce the ongoing violation of human rights resulting from Glencore’s mining activities. Glencore is a Swiss company which has acquired increasing control over El Cerrejón: in 1995 it became the owner of the mine’s central zone; from 2002 to 2021 it held a one-third stake in mining operations; and in 2021 it acquired full ownership of the mine. Its actions have been characterized by social and environmental injustice and corporate impunity, with the La Guajira region paying a heavy price. The report also seeks to highlight the risk of Glencore’s eventual exit from the coal business in Colombia without it meeting its historic obligations to communities or providing comprehensive reparation, as happened with its mines in the department of Cesar.

In this regard, the report describes:

1. The relationship between La Guajira’s humanitarian crisis and Glencore’s operations.
2. The systematic violation of the human rights of Wayuu and Afro-Guajira communities by the company Carbones del Cerrejón.
3. The struggle of the people of La Guajira to access justice in the context of the impunity in which the transnational corporation is operating and the failure to comply with human rights standards and climate commitments.
4. The mine closure plan, which disregards cumulative impacts caused and possible perpetual impacts.
5. Conclusions and recommendations.

1. Glencore and La Guajira's humanitarian crisis: four decades of coal mining

La Guajira is situated in the northernmost part of Colombia. It is characterized by environmental and geographic conditions dominated by tropical dry forest cover. With three natural parks that act as biological corridors, as well as the Ranchería river, the area's main river basin, the region has a unique biodiversity. It is the territory of Colombia's largest indigenous people group, the Wayuu, with Afro-Colombian and peasant farming communities also making up the region's inhabitants.



Figure 1. Map showing La Guajira and the location of the Carbones del Cerrejón mining project

Glencore has been active in the area since 1995, as Figure 2 demonstrates:

North and South Zones	Central Zone
1976-2000: companies Colombiana de Carbón (Carbocol) and Intercor (a subsidiary of Exxon) **1981-1994:** Morrison Knudsen International appointed to construct the mining complex	**1973 - 1975:** Peabody Coal **1982 - 1994:** Mining operations in the Central Zone of the Cerrejón mining complex led by the Domi-Prodeco-Auxini consortium **1995 - 1999:** Mining operations in the Central Zone led by the Glencore-Anglo American consortium
Carbones del Cerrejón Integrated Project	
2000 - 2022: Acquisition of Intercor-Carbocol shares by Glencore, Anglo American and BHP **2002 - 2020:** Glencore, Anglo American and BHP own equal shares in the mining complex, giving the integrated project (Central Zone, South Zone and North Zone) the name Carbones del Cerrejón Limited **2021-present:** Glencore acquires 100% shares in the Carbones del Cerrejón company	

Figure 2. Timeline of Glencore's presence in La Guajira. Source: authors' own, based on data from Garcia et al. (2015) and Cinep (2020).

In 2021, Glencore acquired sole ownership of the company Carbones del Cerrejón Limited.[1] Despite promises of social and economic development and after four decades of mining by Carbones del Cerrejón, not only has there been no reduction in poverty, but there has been a deepening and unprecedented humanitarian crisis. La Guajira is currently experiencing:

- **i)** high levels of extreme poverty and child malnutrition, with more than 5,000 Wayuu children having died of hunger and thirst.
- **ii)** unmet basic needs affecting 81.63% of the department's indigenous population.
- **iii)** just 4% of the rural population with access to potable water.
- **iv)** a state of economic, social and environmental emergency[2] as a result of the severe humanitarian crisis and the effects of coal mining on the right to water and food, with risks and vulnerabilities compounded by the El Niño phenomenon and the climate crisis.

The urgent humanitarian and environmental crisis experienced by the communities of La Guajira has been aggravated by the cumulative damages caused by Carbones del Cerrejón's mining activities and systematic human rights violations, as demonstrated by numerous investigations and court rulings,[3] official communications of UN Special Rapporteurs,[4] visits by European parliamentarians,[5] and in the report of the Special Rapporteur on Economic, Social, Cultural and

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1. Cerrejón (2021). *Sustainability Report.* https://www.cerrejon.com/sites/default/files/2022-09/SUSTAINABILITY%20REPORT%202021-FINAL_compressed_0.pdf
2. Decree 1085 of 2023 declared a state of economic, social and environmental emergency in La Guajira. For further information see https://petro.presidencia.gov.co/prensa/Paginas/Con-la-declaracion-del-Estado-de-Emergencia-Economica-Social-y-Ecologica-en-La-Guajira-el-Gobierno-prioriza-230703.aspx
3. Court rulings and judgements on the issue include: i) Constitutional Court rulings T-528/92, T256/15, T-704/16, SU-698/17, T-614/2019, T-329/2017, T-302/2017, T-445/2016; ii) Supreme Court of Justice 13/09/12, 0014-01 of 07 May 2002; iii) Consejo de Estado (Council of State): 2016-00079 of 13 October 2016; and, iv) Juzgado Promiscuo de Barrancas (mixed jurisdiction municipal court of Barrancas): 2015-00473.
4. https://www.ohchr.org/en/press-releases/2020/09/un-expert-calls-halt-mining-controversial-colombia-site
5. https://www.abcolombia.org.uk/wp-content/uploads/2023/01/FINAL-ESP-ABColombia-Delegation-Report_ESP_US-Letter_Online.pdf

Environmental Rights of the Inter-American Commission on Human Rights (IACHR).[6]

Particularly in the southern part of La Guajira, which is the centre of coal mining activity, the natural landscape has been drastically transformed. The expansion of the mine involved land dispossession and involuntary displacement and resettlement,[7] as well as restricting access to ancestral paths, sacred land, water and other common natural assets (Cuenca et al., 2017).



Figure 3. Expansion of the La Puente pit in the vicinity of Arroyo Bruno. Source: Cinep (2023).

Areas where people once moved freely have been enclosed, thus denying access to spaces used for meeting, play and building identity. Passage has also been restricted to former grazing areas and forest where communities could access plants and trees important in traditional medicine, source materials for building houses, gather fruit and hunt animals, as well as collect water (Arboleda & Cuenca, 2015).

Access to water is particularly important to the life and livelihoods of communities in the department of La Guajira, given its vulnerability to climate change, and projections of average temperature increases of 2.3° C and a 20% reduction in rainfall by the end of the century in the department (Ideam, 2015). Against this backdrop, both the government and civil society organizations are engaging in climate action[8] and making emergency declarations to respond to the crisis and tackle the environmental racism that has plagued the region.

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6. https://oas.org/es/CIDH/jsForm/?File=/es/cidh/prensa/comunicados/2022/265.as

7. https://indepaz.org.co/comunicado-de-las-comunidades-reasentadas-por-cerrejon/. For further information see https://www.facebook.com/laguajirahabla/

8. https://censat.org/tribunal-ordena-al-gobierno-adoptar-medidas-concretas-para-cumplir-los-compromisos-climaticos-del-pais/



Figure 4. Carbones del Cerrejón warning sign in the Ranchería river watercourse. Source: Censat Agua Viva (2013).



Figure 5. Wayuu woman on a diverted stretch of Arroyo Bruno. Source: Cajar (2021).

2. Human rights violations and social and environmental conflict caused by Carbones del Cerrejón

"My only battle is with Cerrejón. I don't have problems other than the ones mining has left me with."
La Guajira leader

Since Carbones del Cerrejón has been active in la Guajira, widespread and systematic violations of the rights of Afro-descendant and Wayuu communities have been recorded, and hydro-social relationships fundamental to community life and survival have been disrupted.


Advierten sobre vulneración de derechos en La Guajira por parte de empresas

El organismo hizo un recorrido por esta región. FOTO: Relatoría Especial DESCA - CIDH

Proponen que se pase de un modelo de Responsabilidad Social Empresarial a uno de Empresas y DD. HH.

RELACIONADOS: DERECHOS HUMANOS CIDH LA GUAJIRA NOTICIA VULNERACIÓN DE DERECHOS

Figure 6. Press release. Source: El Tiempo, 2023.

2.1. Dispossession and land grabbing

Over the four decades of Cerrejón's coal mining operations, a range of dispossession, confinement and forced eviction tactics have been used that have resulted in more than 25 Wayuu and Afro-Colombian communities losing their land. The Colombian State and Carbones del Cerrejón have adopted various land dispossession strategies over the years of mining operations. Here however, we will highlight four key approaches:

i) In the 1970s, the Colombian State declared La Guajira an area designated for the mining of coal.[9] From that time on, it granted mining titles and contracts to transnational corporations in Wayuu and Afro-Guajira territories.

ii) Between 1975 and 1989, the Instituto Colombiano de la Reforma Agraria (Colombian Agrarian Reform Insitute–Incora) caused the fragmentation of Wayuu and Afro-Guajira communities' collective land by granting individual land titles.

iii) Between 1981 and 2003, state authorities inappropriately allocated rights over public lands in favour of subjects that did not fulfil the requisites as agrarian reform beneficiaries. Thus, public land (tierras baldías) irregularly shifted their legal nature through several mechanisms including the acquisition of property, sales, collective sales, auction and aggregation. These property rights over previous public land were then aggregated and transferred to the transnational corporations through sales contracts, the corresponding records were closed, and new property registration numbers obtained.[10]

iv) Since the 1980s, other land dispossession and appropriation strategies have been used in order to expand the area of the mine, causing the displacement and disappearance of more than 25 Wayuu and Afro-Guajira communities (CINEP, 2020).

2.1.1. Land dispossession

Seventeen communities became victims of dispossession of their land through sham negotiations, irregular land purchases, threat of expropriation for public utility, and direct expropriation. Emblematic cases include the communities of Manantial, Las Mulas, Jamiche, Oreganal, Caracolí, Palmarito, El Descanso, Sarahita, Cabezaperro, Tabaco, Las Casitas, and Roche, among others.

2.1.2. Forced displacement and confinement

- Nine communities were displaced to different municipalities or nearby communities.
- Tabaco is the only community recognized by the Constitutional Court as a victim of development-induced displacement (Ruling T-329/17).
- Just four communities were partially resettled, involuntarily (Roche, Patilla, Chancleta and Las Casitas), and one community was resettled in its entirety (Tamaquito II); however, despite having been resettled, the community has not recovered its former levels of well-being, nor has it received adequate reparation or fair and respectful treatment.[11]

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9. On 25 August 1973, Decree no. 1704 declared a number of coal-rich zones special reserves, including El Cerrejón, which is situated between the Carraipia and Cuestecitas villages and Buenavista inspectorate.

10. "A direct consequence of this finding is that the transactions and subsequent accumulation of ownership rights in contravention of legal requirements should have been declared invalid, despite this accumulation having happened more than thirty years before Law 160 of 1994 came into force, because this should not have precluded compliance with the restrictions on accumulation that already existed in articles 37, 38 and 51 of Law 135 of 1961." (García et. al, 2016, p. 17).

11. For further information see: https://www.cinep.org.co/publi-files/PDFS/20211004_Negras_hoscas.pdf https://cinep.org.co/publi-files/PDFS/20170302.las_casitas_2.pdf

- Twenty-one communities were subjected to confinement through the fencing off of roads and restrictions on their movements as well as their ability to remain on their land and engage in livelihoods work. Restrictions on movement inhibited access to town centres, hospitals, educational services and other communities with whom they were trading, including Tamaquito II, Las Casitas, Patilla, Manantialito.



Figure 7. School forcibly destroyed as a result of mining expansion in Las Casitas, Barrancas. Source: Cinep (2020).

2.1.3 Forced evictions

The Tabaco and Roche communities, among others, were evicted from their land in 2002 and 2016 respectively by Carbones del Cerrejón and aided by the force of the Escuadrón Móvil Antidisturbios (Mobile Riot Brigade-ESMAD).[12] These evictions, carried out by municipal authorities, have not observed due process guarantees and have been marred by irregularities, arbitrariness and disregard for international human rights norms and standards.



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12. https://www.business-humanrights.org/es/%C3%BAltimas-noticias/desalojo-violento-de-comunidad-afro-roche-la-guajira-para-favorecer-intereses-de-carbones-de-cerrej%C3%B3n/





Figure 8. Evictions in Tabaco on August 9, 2001, using violent force. On the left and in the centre, the population confronts ESMAD to prevent its heavy machinery from knocking down their houses; on the right, a woman points to what used to be her home, now destroyed. Source: Photo stills from the video 'Desalojo de la comunidad de Tabaco' (Eviction of the Tabaco community), by the Comité Cívico por la Defensa de la Guajira (2012).

The strategies used to expand the mine in La Guajira have irreparably destroyed the social fabric of communities and caused the permanent loss of land and the slow death of hundreds of people from sadness, desolation and destitution.

2.2. Carbones del Cerrejón and the breakdown in the hydro-social territoriality of La Guajira

The Ranchería river is La Guajira's primary water source. Around 450,000 people depend on its supply both of groundwater and surface water, which is fed by multiple streams and gorges (Terrae, 2019b). However, La Guajira experiences specific climatic conditions that make it prone to water stress, meaning the area is particularly vulnerable to climate crises (Contraloría General de la República, 2016).

Water thus represents an axis that connects and fosters the development of community life. The middle Ranchería river basin is a hydro-social territory in which a variety of actors come together, often leading to disputes over the control of water (Ulloa et al., 2020). In the context of mining activities, these disputes can be understood in terms of privatization, since the control over water by private actors limits its use as a common resource (Urrea & Rodríguez, 2014). In the case of mining in the south of La Guajira, the privatization of water not only entails its monopolization and restricted access to it, but also a decrease in water quality, due to contamination, and quantity, due to the reduction of, depletion of or direct interference with natural watercourses (Caro, 2018).

Numerous reports have been produced that document at least four strategies used by Carbones del Cerrejón to privatize water sources:

2.2.1. Privatization through the appropriation of water

The Carbones del Cerrejón mining complex is situated along the middle Ranchería river basin, thus benefiting from the river's water for its mining activities. In 2020, the volume of surface water withdrawn from the Ranchería river and its tributaries equalled 1,004,473 m3/year, while groundwater concessions for the same year equalled 104,103 m3/year (Corporación Autónoma de La Guajira, 2022). It is important to note that this data corresponds to water withdrawal permits granted by the environmental authorities.

2.2.2. Privatization through restricting access to water sources

The expansion of the mine involved land grabbing and enclosure, including restricting access to different water sources such as rivers, streams, gorges, mills, ponds and wells. These water sources, as well as being used to meet needs related to household consumption, productive activities, and food sovereignty, hold great significance for the life and culture of Wayuu, Afro-Guajira and peasant farming communities (Arboleda & Cuenca, 2015).

2.2.3 Privatization through compromising the quality of or contaminating water

According to information provided by Corpoguajira, between 2018 and 2013 eleven (11) sanctions proceedings were initiated against Cerrejón, the majority of which relate to non-compliance with water discharge permits.[13] Meanwhile, independent technical studies have identified the presence of manganese, barium and copper in the Arroyo Bruno basin that exceed allowable limits for human water consumption (Terrae, 2019b). The detection of selenium in the lower part of the stream is a cause for concern, given that, when present in high concentrations, it is a pollutant hazardous to human health (Terrae, 2019b). In addition, samples collected by independent studies revealed an upward trend in alkaline levels, which can create a hospitable environment for metals such as arsenic, molybdenum, zinc and cadmium that are more mobile at that pH level (Terrae, 2019b).



Figure 9. The natural watercourse of Arroyo Bruno. Source: Censat Agua Viva (2013).

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13. Six (6) for non-compliance with discharge permits, one (1) for not being in possession of a discharge permit, one (1) for environmental pollution in Provincial, one (1) for not complying with a range of permit obligations, two (2) unspecified, according to Corpoguajira's response to the right of petition (2023).

2.2.4. Privatization through reduction, depletion or direct intervention in natural watercourses[14]

According to information provided by Carbones del Cerrejón to the Autoridad Nacional de Licencias Ambientales (National Environmental Licensing Authority–ANLA), at least 38 interventions in surface water sources in the mining project area have been carried out in the context of Carbones del Cerrejón's operations.[15] At the same time, independent studies have documented physical changes in water bodies as a result of Carbones del Cerrejón's mining activities: 68.67km or 39.42% of watercourses have been lost, including 0.18km (1.83%) of Arroyo Bruno, 0.19km (2.45%) of Arroyo Tabaco, and, even though the Ranchería river itself remains the same, 68.3km (51.25%) of its tributaries' watercourses have disappeared (Terrae, 2019a).

Community assessments have also noted significant changes and a reduction in water availability in the Palomino and Mapurito rivers, alongside the disappearance and/or reduction in size of more than 17 streams[16] belonging to the Ranchería river basin (Cinep, 2022), as shown in figures 10 and 11.

In addition, to assess the current state of the streams that Carbones del Cerrejón has intervened in, and the perpetual impacts caused by its mining activities, on 25 and 26 March 2023 Cinep/PPP carried out a monitoring walk around several of the streams near the La Puente pit and other nearby pits under Cerrejón's charge, during which the effects on streams near Arroyo Bruno were evident. This shows the cumulative impact on the area's water dynamics. The photographic evidence below demonstrates the effects on and depleted state of the impacted streams in the areas near Arroyo Bruno.

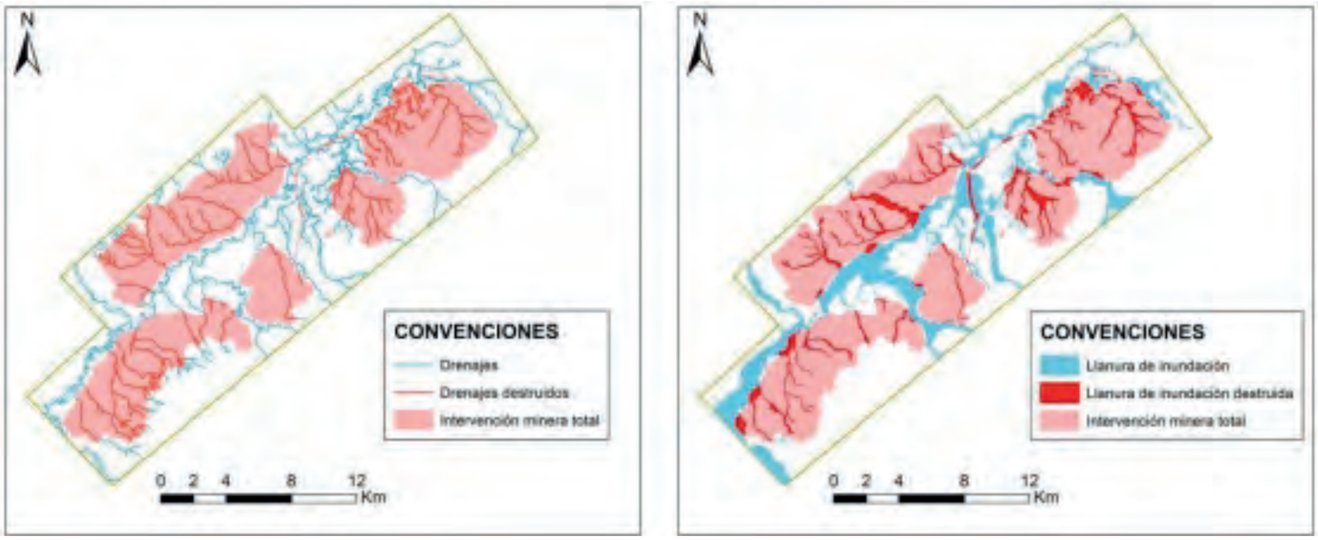


Figure 10. Drainage and flood plains destroyed by Carbones de Cerrejón. Source: Terrae (2019a, 2019b).

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14. In ruling T-256 of 2015, the Constitutional Court issued a warning to the environmental authorities to "control and monitor surface water and groundwater reserves, in view of operations being carried out by the defendant company (Carbones del Cerrejón), since the massive pumping of water is leading to the depletion of aquifers that currently supply the population with water" (...) given that "it would be paradoxical to allow the defendant company to continue extracting significant quantities of water at a rate greater than that of the natural recharge of the aquifers or, worse still, allow rivers and streams to be diverted in a clear affront to the protection of water resources, the environment and human life in that area of the country."

15. Seven (7) interventions in the North Zone, sixteen (16) in the New Mining Areas and fifteen (15) in the Central Zone, according to ANLA's response to the right of petition (2023).

16. These include: La Puente, Cerrejoncito, La Chercha, Sequión, Luis, Trampa, El Mamón, El Hatico, Manantial, La Ceiba, Medianía, Macanal, Gayuso, Morocónlo, Ciénaga, Tabaco, Aguas Blancas, Bruno, Pupurema (Cinep, 2022).

Arroyo Aguas Blancas



Arroyo Cerrejón



Arroyo La chercha



Arroyo Cequión



Arroyo Ceiba



Arroyo Kaurina



Arroyo La Trampa



Puntosidentificadosenelrecorrido



Figure 11. Monitoring of streams impacted by Carbones del Cerrejón, showing how several bodies of water have almost completely disappeared. The map in the bottom-right corner shows the location of streams and the stopping points along the route. Source: Cinep (2023).

2.2.4.1. The diversion of Arroyo Bruno

The P40 project aims to expand the output of the Carbones del Cerrejón mine by enlarging the La Puente pit and diverting a 3.6km stretch of Arroyo Bruno that supplies water to more than 40, mostly Wayuu, communities, including La Horqueta, La Gran Parada and Paradero (Colombia Informa, 2021; Terrae, 2019b). Representatives of these communities lodged a 'tutela' (action to enforce constitutional rights) to put a stop to this environmental catastrophe that violates their fundamental rights. Despite this, Carbones del Cerrejón went ahead with the first phase of works to divert the stream in 2017. At the end of the same year, in ruling SU-698/2017, the Constitutional Court found in favour of the communities (Corte Constitucional, 2017)

The ruling states that, due to lack of information or "environmental uncertainties", among other reasons, the conclusion was reached that "the project to divert Arroyo Bruno constitutes a concrete, credible and direct threat to the rights to water, health and food security and sovereignty of the communities that depend on Arroyo Bruno."[17] Consequently, it ordered the temporary suspension of works.[18] In spite of this order, the company is continuing to excavate the pit and increase the size of the dump and sedimentation ponds.[19] These actions, together with other evidence, are in the process of being reviewed by the Constitutional Court, since the company has allegedly failed to comply with several orders issued by the Court.[20]



Figure 12. Upper part of Arroyo Bruno's natural watercourse in the Wayuu indigenous community of Rocío. Source: Cajar (2023).



Figure 13. Natural watercourse of Arroyo Bruno, now diverted. Source: Cajar (2023).

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17. SU698-17 Corte Constitucional de Colombia

18. A419-17 Corte Constitucional de Colombia

19. Cinep/PPP. *Comunidades denuncian reinicio de actividades mineras alrededor del arroyo Bruno en La Guajira* (Communities denounce resumption of mining activities around Arroyo Bruno in La Guajira). Press release.

20. Corte Constitucional. (September 22, 2023). *Corte convoca sesión técnica para verificar cumplimiento de órdenes en la Sentencia que amparó los derechos a tres comunidades étnicas que desarrollan sus actividades en el arroyo Bruno en La Guajira* (Court convenes technical session to verify compliance with orders in ruling protecting the rights of three ethnic communities that carry out their activities in Arroyo Bruno in La Guajira)

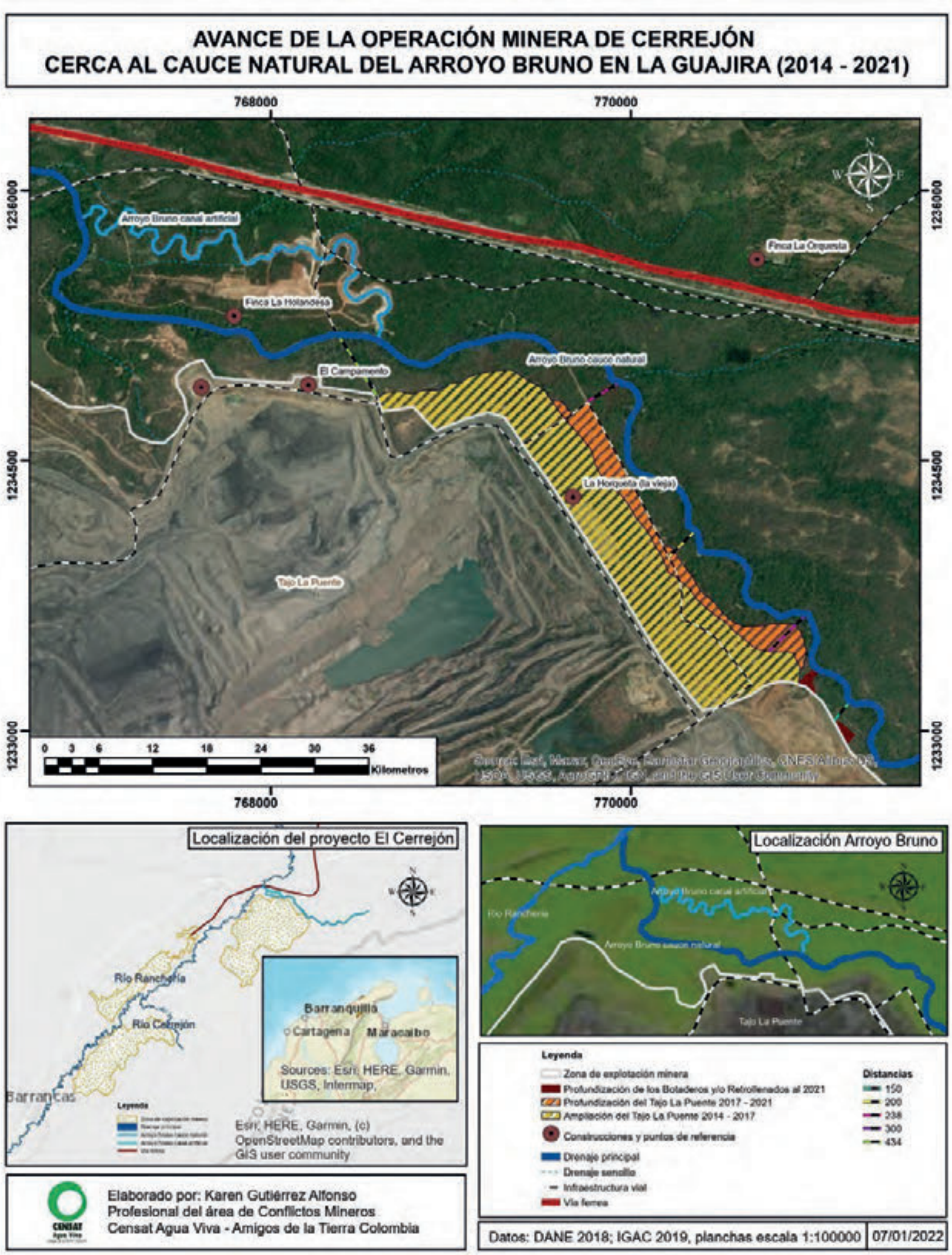


Figure 14. Advance of Cerrejón mining operations near Arroyo Bruno's natural watercourse in La Guajira (2014-2021). Source: Censat Agua Viva (2021).

2.3. Threats, harassment and persecution: who is responsible?

The increasing risks to human rights defenders cannot be seen in a vacuum or divorced from the underlying root causes of attacks. Human rights defenders are often attacked because they shine a light on underlying patterns of harmful business conduct and investment. As businesses, often in collaboration with the State, seek access to natural resources and land, for example, they may engage in economic activity that adversely impacts the rights of communities, including water, environmental and land rights.

(...) If the business enterprise itself is causing or contributing to human rights abuse affecting defenders, their responsibility is clear-cut: they need to end the abuse and address any harm that has occurred.

The UN Guiding Principles on Business and Human Rights: guidance on ensuring respect for human rights defenders (2021).

The operations of transnational corporations cause tensions and contradictions, and businesses that operate in conflict contexts such as La Guajira must enhance their duties to protect and care for the rights of human rights defenders: "The Guiding Principles clearly stipulate that business enterprises operating anywhere need to assess whether they are causing, contributing to or are linked to human rights abuses, and this includes risks to human rights defenders."[21]

Furthermore, according to the UN, in the case of conflict-affected areas, States where transnational corporations are headquartered should help those businesses avoid becoming implicated in human rights violations. Businesses benefiting or aiding armed groups can even incur criminal liability.[22]

Colombia is a country with an active armed conflict, and illegal armed groups are present in La Guajira.[23] The violent context has led to the militarization of the area and assistance contracts being signed between state armed forces and Carbones del Cerrejón.

On this basis, Glencore and Carbones del Cerrejón would be expected to pay particular attention to the security situation of social leaders in the region. Instead, there are constant reports of them being threatened, harassed, persecuted and attacked after filing claims, making public complaints, organizing demonstrations or carrying out advocacy tours to expose systematic human rights violations.[24]

This situation has led to 70 cases of human rights violations being documented in 2022 and 2023 that occurred between 1995 and 2022;[25] these cases include 150 violations of fundamental rights to life, integrity and freedom of the person. Attacks were concentrated in the areas where the Carbones del Cerrejón mine is being enlarged and in the immediate vicinity of the railway line that transports coal.

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21. UN Human Rights Council. (2021). The UN Guiding Principles on Business and Human Rights: guidance on ensuring respect for human rights defenders.

22. InsightCrime. (July 30, 2014).Colombia's Paramilitary-Coal Nexus: Drummond, Glencore Face New Accusations.

23. Fundación Ideas para la Paz. (July 8, 2013).Conflicto armado en La Guajira y su impacto humanitario (Armed conflict in La Guajira and its humanitarian impact).

24. Many statements, press releases and denouncements have been published about attacks on leaders from La Guajira, such as the following blog post by Global Witness: "We are going to kill you." A case study in corporate power left unchecked.

25. Since 2022, Cinep together with Banco de Datos de Derechos Humanos de La Guajira (La Guajira Human Rights Database) has been carrying out a documentation exercise, gathering primary testimonies, complaints filed with the public prosecutor's offices and statements. This process has resulted in the documenting of 70 cases involving individual and collective victims in La Guajira related to leaders and other victims of Glencore's operations. This data represents an underestimate given the countless attacks on communities that have denounced the Carbones del Cerrejón mining project, and which it has not yet been possible to document.

They include the following types of human rights violations:

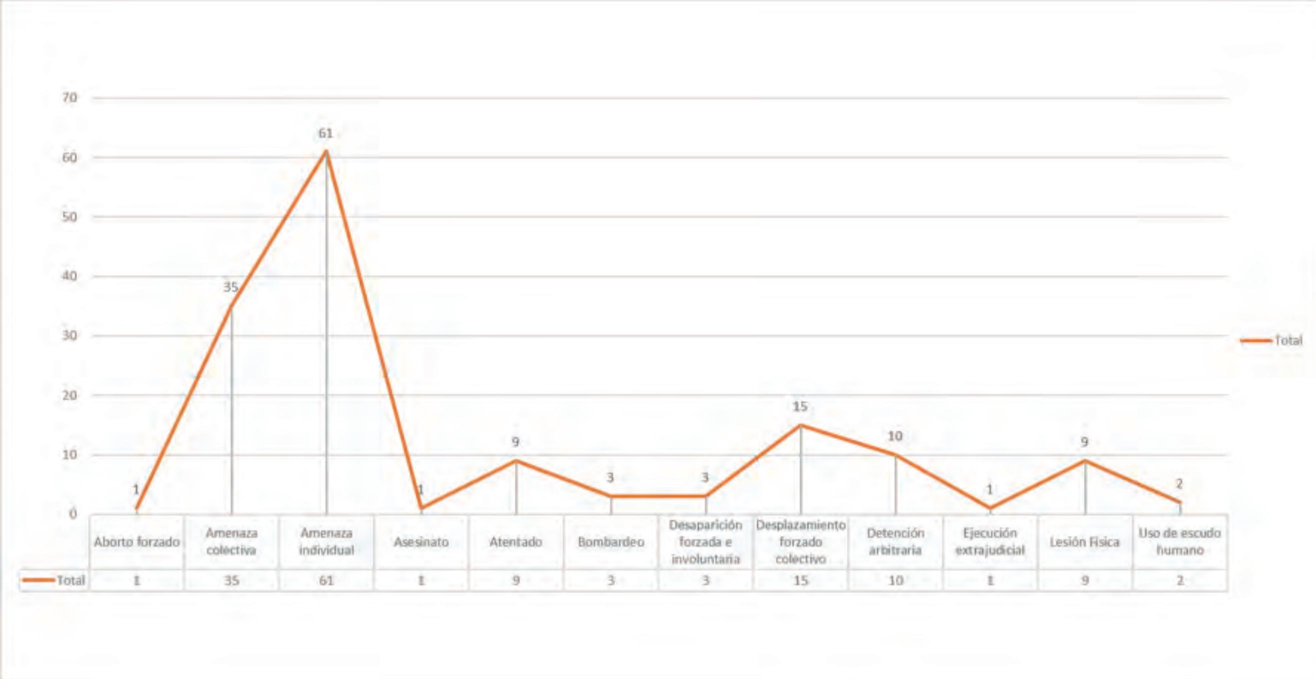


Figure 15. Types of human rights violations. Source: Cinep (2023)

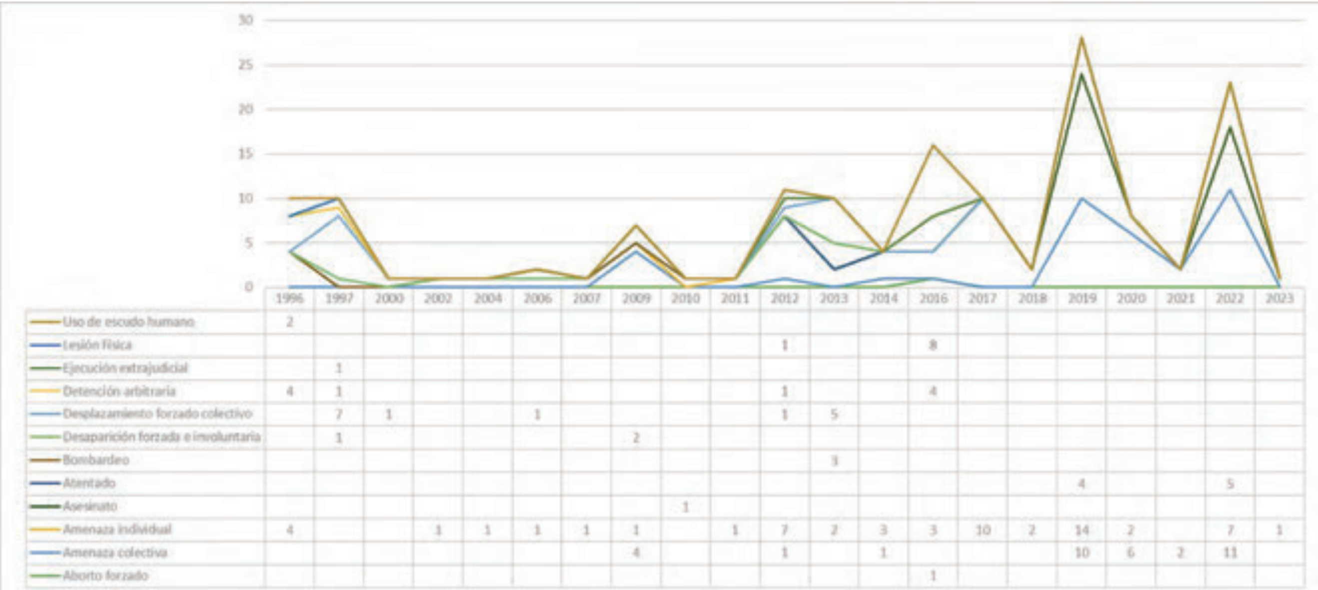


Figure 16. Overview of the types of human rights violations against leaders who have denounced Carbones del Cerrejón between 1995 and 2022. Source: Cinep, (2023).

Figure 16 reveals a pattern concentrated in individual and collective threats against human rights defenders. In addition, and in line with the company's mine expansion strategy, the following can be observed:

1. Between 1996 and 2003, militarization increased across the territory in areas of mining interest,[26] as did army and police aggression aimed at intimidating La Guajira's Afro-descendent and Wayuu communities. Their brutal actions were intended to terrorize communities, who ended up selling their land to the company at a low price and/or were displaced by mining activities. Later, militarized action was coordinated through security contracts agreed with Carbones del Cerrejón.[27]

2. Peaks in attacks on human rights defenders in La Guajira correspond to specific moments in Cerrejón's corporate activities:

   i) From 2007 to 2009, there was a peak in attacks linked to forced resettlement processes, the expansion of mining pits and social mobilization.

   ii) Between 2012 and 2014, threats against social leaders increased as part of strategy to intimidate and stigmatize them and undermine organizing processes in victim communities.

   iii) From 2016 to 2023, threats against individual and groups of leaders are seen to peak when Colombian High Court judgements rule in their favour,[28] when a simple annulment action against the company's environmental permit is lodged,[29] and when a protest[30] is organized by communities affected by the project.[31]

3. Among the documented cases, there is a clear systematic nature to attacks on leaders with a high profile due to their activities criticizing Carbones del Cerrejón.[32]

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26. Launched in 2001, the 'Plan Fortaleza' (Fortress Plan) ordered 10,000 soldiers to be brought in over four years to carry out defensive tasks. A new aspect introduced by this plan was the development of a 'Plan Especial Energético y Vial' (Special Energy and Roads Plan) that led to the stationing of 'Batallones Especiales Minero-Energéticos y Viales' (Special Mining-Energy and Road Battalions) across the country to safeguard mining and infrastructure operations (Tierra Digna, 2010).

27. The senator Iván Cepeda gave a presentation to Commission II of the Colombian Senate in 2015 entitled 'Convenios entre empresas del sector minero-energético y fuerza pública' (Agreements between companies in the mining and energy sectors and the armed forces). His presentation revealed that between 2008 and 2014 Carbones del Cerrejon Limited's operation, which is owned by Glencore, had a Special Mining-Energy and Road Battalion on its premises, as well as security agreements in place between the company and the armed forces.

28. The following are some of the rulings by the Colombian Constitutional Court resulting from 'tutela' actions brought by La Guajira leaders:
2015 ruling: T-256-15 Corte Constitucional de Colombia
2016 ruling: T-704-16 Corte Constitucional de Colombia
2017 ruling: SU 698-17 Corte Constitucional de Colombia
2017 ruling: T-329-17 Corte Constitucional de Colombia
2019 ruling: T-614-19 Corte Constitucional de Colombia

29. Prensa Cajar. (August 6, 2019). Consejo de Estado estudiará demanda contra la licencia ambiental de Carbones del Cerrejón. (Council of State will review claim against Carbones del Cerrejón's environmental permit)

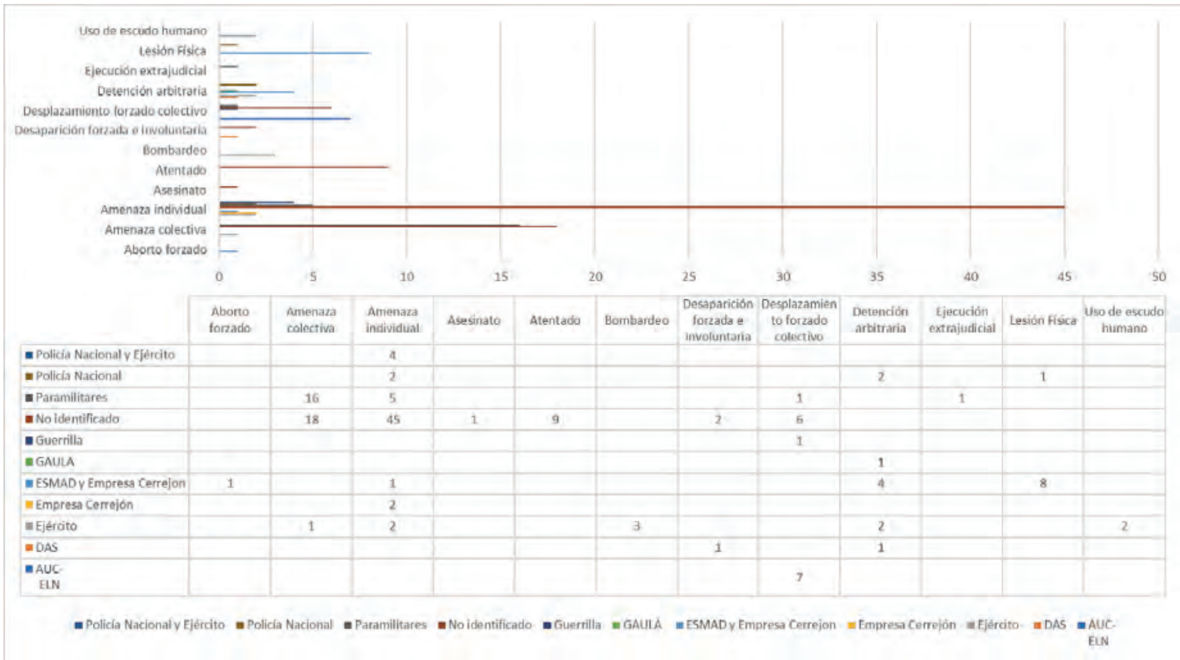
30. Caracol. (September 1, 2022). Bloquean vías en el sur de La Guajira (Communities block roads in the south of La Guajira).

31. Bolaños, E. (August 14, 2018). "Cerrejón debe ir más allá de rechazar las amenazas contra los líderes de la Guajira": Aviva Chomsky. ("Cerrejón must go beyond just opposing threats against the leaders in La Guajira", says Aviva Chomsky). El Espectador.

32. Public reports of threats against environmental leaders who have confronted Carbones del Cerrejón through media and legal action include:
CAJAR, Censat Agua Viva, Cinep, Plataforma La Guajira le habla al país. (September 4, 2021). Denuncia pública Alerta urgente por la incursión de hombre armado en la comunidad Wayúu de Paradero, defensora del Arroyo Bruno (Public denunciation. Urgent alert relating to incursion by armed man into the Wayuu community of Paradero, defender of Arroyo Bruno).
Business & Human Rights Resource Centre. (May 23, 2022).Colombia: Intenta asesinar a lideresa Wayúu que denunció ante la Corte Constitucional impactos de derechos humanos de Cerrejón (Colombia: attempt to assassinate Wayuu leader who denounced human rights violations by Cerrejón to the Constitutional Court)
El Espectador. (October 21, 2021). Gobierno colombiano, sin voluntad para proteger a líderes ambientales (Colombian government lacks will to protect environmental leaders)
Caracol. (April 14, 2022). Lider Wayuu en defensa del arroyo Bruno denuncia amenazas en La Guajira (Wayuu leader defending Arroyo Bruno denounces threats in La Guajira)
El Espectador. (August 19, 2022). El lío por una tierra wayú que implica a actores armados y al Cerrejón(the mayhem over Wayuu land involving armed actors and Cerrejón)



Figure 17. Photographs of leaflets with threats from the Águilas Negras paramilitaries, received by communities. Source: London Mining Network press release (2018).



	Aborto forzado	Amenaza colectiva	Amenaza individual	Asesinato	Atentado	Bombardeo	Desaparición forzada e involuntaria	Desplazamiento forzado colectivo	Detención arbitraria	Ejecución extrajudicial	Lesión Física	Uso de escudo humano
Policía Nacional y Ejército			4									
Policía Nacional			2						2		1	
Paramilitares		16	5					1		1		
No identificado		18	45	1	9		2	6				
Guerrilla								1				
GAULA									1			
ESMAD y Empresa Cerrejon	1		1						4		8	
Empresa Cerrejón			2									
Ejército		1	2			3			2			2
DAS							1		1			
AUC-ELN								7				

Figure 18. Alleged perpetrators of abuses against leaders in La Guajira, 1995-2022. Source: Cinep (2023).

Findings also revealed that in 54% of cases the perpetrators of abuses could not be identified, in 15% paramilitaries were the alleged perpetrators (the Águilas Negras and Autodefensas Unidas de Colombia), and in 9% the Escuadrón Móvil Antidisturbios (Mobile Riot Brigade - ESMAD) and employees of Carbones del Cerrejón were alleged to be jointly responsible (Figure 18).

Besides some statements issued by Carbones del Cerrejón criticizing the threats, no other strategies adopted by the company to prevent and mitigate these human rights violations have been noted.

3. Glencore in Colombia: between corporate power and impunity

There's a lot of pollution in our indigenous reservation; when we saw it, we knew in our gut that we wanted to do something, to show them that people are dying from lung disease, that the smell and fumes from the coal make the children sick.[33]

Young woman from Provincial indigenous reservation (2021)

Faced with systematic human rights violations, communities and their leaders have sought to obtain a response from Glencore by making denunciations and using judicial mechanisms. However, the company continues to operate with impunity, given the lack of effectiveness of national laws and international agreements on businesses and human rights in guaranteeing truth, reparation, sanctions and comprehensive justice.



Figure 19. Coal dust rising in the distance. Source: Censat Agua Viva (2013).

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33. It is worth noting that, according to some of the research cited below on the relationship between pollution and harm to health referred to in Constitutional Court ruling T-614 of 2017, Provincial is not the only community exposed to serious health risks. Everything in the mining corridor is exposed to environmental pollution and health risks.

There is solid evidence that the transnational corporation has operated with impunity in Colombia. For example:

1) Numerous rulings by the Colombian High Courts corroborate the extensive information demonstrating the systematic human rights violations and environmental damages associated with its mining operations in Colombia. This includes the finding by the Constitutional Court, in ruling T-329/2017, that the displacement of the Afro-descendant community of Tabaco was 'development-induced', i.e., that it is a type of displacement not linked to the internal armed conflict, but rather caused by mining operations.

2) The United Nations[34] and the Inter-American Human Rights system have made public pronouncements about human rights violations against the Wayuu and Afro-descendent communities resulting from the company's mining operations. The area around the mine has also been classified as one of the planet's 50 most polluted places, referred to as sacrifice zones.

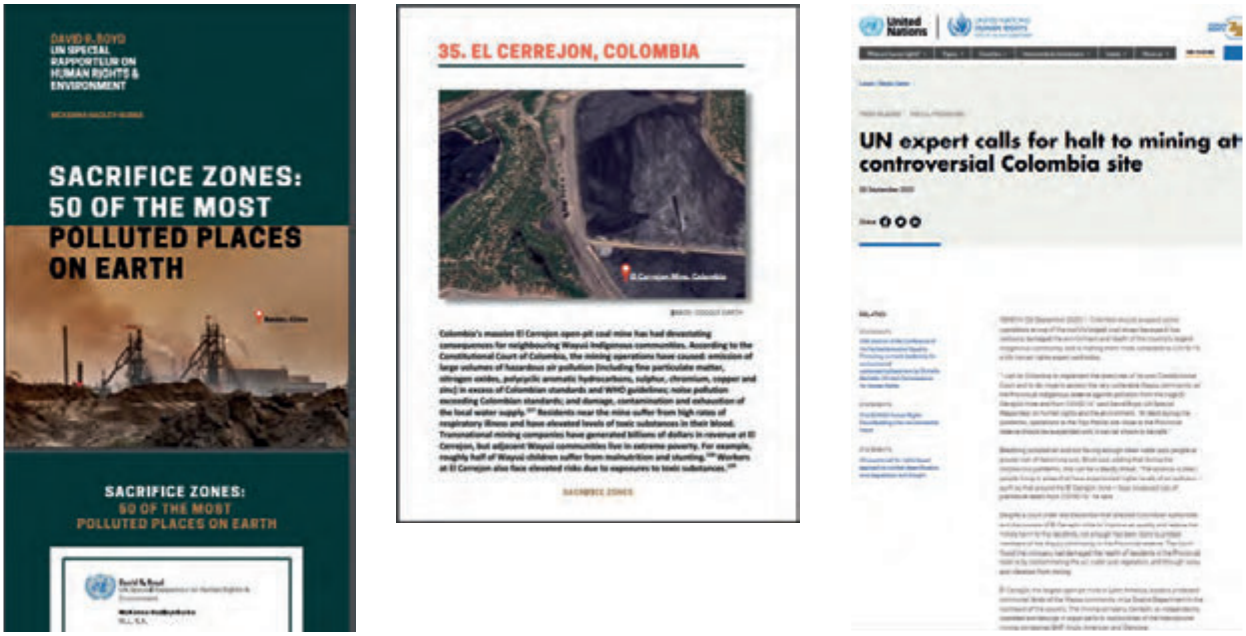


Figure 20. Source: Cover of the report 'Sacrifice Zones: 50 of the most polluted places on earth' by Special Rapporteur David Boyd. UN press release 'UN expert calls for halt to mining at controversial Colombia site'.

3.1. What is the OECD doing?

In 2007, some of the leaders of the Tabaco community approached the National Contact Point (NCP) of the Organisation for Economic Cooperation and Development (OECD) in Australia, complaining of the complicity of transnational corporations BHP Billiton, Glencore (formerly Xstrata) and Anglo American in human rights violations against them. As a result of this process, coordination began between the Swiss, U.K. and Australian OECD NCPs, leading to the formation of a panel of experts known as the *Third Party Review,* who published a report with recommendations in March 2008.

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34. See UN report providing supplementary information to the report of the Special Rapporteur on human rights and the environment, David Boyd, *Special Rapporteur on human rights and the environment, and OHCHR (2020),* UN expert calls for halt to mining at controversial Colombia site.

That year, agreements were signed between Carbones del Cerrejón, the Hatonuevo municipal authorities and some leaders in which compensation and the physical rebuilding of Tabaco were promised; however, these agreements were not reached through a broad-based participatory process or in the framework of the right to consultation, and they failed to provide comprehensive reparation in an appropriate, inclusive, transparent and fair manner (Cajar, 2022). To this day, the members of the Tabaco community continue to have their fundamental human rights violated.

In 2021, fourteen years after the OECD NCPs were first approached, a coalition of national and international organizations–including AIDA, Cinep/PPP, Cajar. ASK!, Christian Aid, ABColombia and GLAN–lodged five complaints with the OECD NCPs in Ireland, the United Kingdom, Switzerland and Australia, denouncing the impacts caused by the Carbones del Cerrejón-operated mine.[35]

During this process, the Swiss NCP did not follow proper procedure in relation to promoting access to information and guaranteeing participation by the affected communities. At the end, the Swiss NCP's statement centred around reiterating Glencore's human rights obligations–which are the same as those applying to all businesses–, failing to make relevant recommendations. The Australian and U.K. NCPs followed suit, merely restating the Swiss NCP's position.

In light of this experience, it bears mentioning that:

i. The OECD process is one of the few mechanisms that exist in countries such as Switzerland to assess businesses' compliance with their corporate responsibilities.

ii. The adoption of the OECD guidelines entails commitments that are voluntary for businesses but binding for States.

iii. Efforts to pursue justice through non-judicial mechanisms like these expose the pronounced and wearing imbalances that characterize these systems. They prioritize the interests of businesses with long histories of corruption[36] and human rights violations over justice and the life of historically excluded people groups.

iv. The mechanism thus turns out to be inadequate and ineffective. The final conclusions of the Swiss NCP suggest the intentional adoption of a position of tolerance towards and cover-up of Glencore's activities.

3.2. So, can Glencore not see?

> *It is not justifiable (...) that there is currently no significant, genuine, timely and effective protection to remedy the state of disintegration experienced by this Afro-descendent community. Because, as recorded in the 'tutela', the state of neglect the community is experiencing, its disintegration and the impossibility of its resettlement,* ***represent a current and ongoing violation of its fundamental rights.*** *Despite the 29 actions taken by the company, the current conditions of the Tabaco community, and the persistent absence of genuine and adequate compensatory measures that extend to all its inhabitants, cannot be justified either by the company or by the Hatonuevo municipality*
>
> Colombian Constitutional Court, ruling T-329 of 2017

On several occasions, Glencore has demonstrated a disregard for the consequences of its operations. Instead, it has asserted that its work is faultless. In a statement released on 22 October 2021,[37] it guarantees that it is committed to acting as a responsible steward of its 'mining assets', and as such it takes into account their impact on human rights and the environment.

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35. https://www.oecdwatch.org/complaint/glan-vs-glencore/ and https://www.elespectador.com/judicial/denuncian-en-la-ocde-a-los-duenos-de-cerrejon-y-piden-que-se-vayan-de-la-guajira-article/

36. See https://www.theguardian.com/business/2022/nov/03/london-court-forces-glencore-to-pay-record-281m-for-bribery-in-africa and https://www.justice.gov/opa/pr/glencore-entered-guilty-pleas-foreign-bribery-and-market-manipulation-schemes

37. https://www.glencore.ch/dam/jcr:3741a8a4-af02-48a0-9971-e256deb2e72d/Facts%20on%20Cerrejon%202021%2010%2022_ENG.pdf

The Cerrejón mine does not poison people or the environment. Cerrejón has operated in compliance with Colombian law and has continuously followed international standards to enhance its performance. These standards include the UN Guiding Principles on Business and Human Rights; the IFC´s social and environmental performance standards; the Voluntary Principles on Security and Human Rights, the UN Global Compact; and the Sustainability Framework of the International standard for environmental management (ISO14001). (Glencore, 2021).

Two years prior, however, the Colombian Constitutional Court stated, in ruling T-614/2019:

(...)The Court concludes that in Provincial a very specific situation arises: (I) there is a very real danger of damage being done and continuing to be done to the environment and to human health; (ii) this would entail serious and irremediable harm to the community; and (iii) it has been scientifically validated that this risk is not formed of unsubstantiated allegations. (...) In rulings SU-698 of 2017, T-704 of 2016, T-256 of 2015 and T-528 of 1992, this Body[38] analysed cases that displayed several similarities to that of the Provincial community, in which we examined the severe effects caused by open-pit coal mining and the danger it poses to life around it. (...) Thus, the company failed to comply with the international due diligence standard required by the Guiding Principles on Business and Human Rights, also known as the 'Ruggie Principles', to avoid violating the human rights of populations at risk of being affected.

Despite all the effects described, the company refuses to accept the legitimacy of claims against it. For example, according to Colombian media outlet El Turbión, during Glencore's shareholder meeting in May 2023 in Switzerland, a shareholder challenged the company's chair, Kalidas Madhavpeddi , regarding the presence of protesters outside the building. Madhavpeddi responded as follows: *"What are those people doing outside? The people outside can say whatever they want to say, but (...) Glencore is a company that focuses on helping the communities and countries in which it operates, and we may not always agree with some people, but personally, I am not aware."*[39]

3.3. International claims: when impunity and contradiction rule

Our dream is that all Arroyo Bruno's waters would be set free. By that we mean that the waters diverted into the artificial canal would return to their natural course and there would be no more mining expansion on our land. We dream of an Arroyo Bruno with no intervention and no mining. Its destruction is an environmental crime. Working to defend Bruno/Youluna has been a long struggle.

Roxana Ipuana and Elsis Sierra (2021).

In the aforementioned shareholder meeting, 29.2% of Glencore's investors rejected the company's climate plan[40] and voted in favour of a resolution demanding greater clarity on how its thermal coal production aligns with roadmaps to limit global temperature rises. Glencore's 2022 sustainability report states that it adopts "a holistic approach"[41], recognising its responsibility to contribute to global efforts to meet the Paris Agreement objectives, for which it promises an emissions reduction plan.

However, Glencore is directly and indirectly responsible for greenhouse gas (GHG) emissions, as well as for causing irreversible impacts in the communities affected by its coal mining operations. Its climate policy should adopt a social and environmental justice approach, aiming to comprehensively remedy territories transformed into sacrifice

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38. The Constitutional Court is referring to itself.

39. https://elturbion.com/18337

40. https://www.swissinfo.ch/spa/economia/los-inversores-presionan-a-glencore-por-el-clima/48446176

41. Informe de Gestión y Sostenibilidad 2022 (Management and Sustainability Report 2022): https://www.glencore.cl/.rest/api/v1/documents/53cf84e-99802c1a88c0f79cd5b74bc89/Informe+de+Gesti%C3%B3n+y+Sostenibilidad+2022+Altonorte.pdf

zones due to the inequitable distribution of costs and benefits within the global fossil fuel industry's mining-energy model.

Due to the signing of an investment protection agreement between Switzerland and Colombia, Glencore filed a claim against the Colombian State regarding the Constitutional Court's judgement in ruling SU-698/2017, in which it found in favour of the rights of the Wayuu people and ordered the suspension of Arroyo Bruno's exploitation while the project's social and environmental impact was assessed. In that claim, Glencore demands millions of dollars of compensation,[42] describing the measures taken by the Court as "discriminatory, arbitrary and unreasonable", and warns that it reserves the right to increase its claim if Colombia takes any further action that might aggravate its losses.

These situations prompt the question:

1) How can Glencore reconcile its climate commitments with the claim it filed against Colombia for a court ruling ordering the company to assess the impact on the climate and on vulnerable indigenous groups before expanding its coal mine?

2) Given that the Intergovernmental Panel on Climate Change (IPCC) has recommended letting coal remain in the subsurface as an effective measure to tackle climate change, it is inconsistent of Glencore to file a claim because it is not permitted to expand one of its coal mine pits to increase extraction.

Another point of note is that the Swiss Government's National Action Plan on Business and Human Rights 2020-2023 states that the federal government should ensure that investment agreements are consistent and "provide sufficient domestic policy scope to fulfil the human rights obligations of both Switzerland and the contracting partner."[43] In the Switzerland-Colombia case, it is clear that the agreement not only failed to achieve this, but that it is also undermining and interfering with the fulfilment of obligations, sovereignty, the rights of indigenous people and the independence of the judiciary in Colombia.



Figure 21. 'La Guajira le habla al país' (La Guajira is talking to the country) caravan. Source: Cinep (2023).

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42. Due to confidentiality terms, there is no public information that can be consulted to determine the exact amount being demanded.

43. United Nations. Human rights-compatible International Investment Agreements. file:///C:/Users/mmatiz/Downloads/Informe%20Acuerdos%20de%20iNversion%20y%20DDHH%20GTEDHH%20rv.pdf

4. Carbones de Cerrejón’s mine closure plan: a failure to address the cumulative impacts of four decades of coal mining or contribute to just energy transitiona

Given current debates on decarbonising economies as a means of tackling the global climate crisis, the grievances of communities affected by Carbones del Cerrejón Limited’s operations are increasingly relevant to the need to plan for a just mine closure. Yet, the company’s current mine closure plans compound the socio-environmental injustices prevalent in its operations amid a context of impunity and disregard its responsibilities for the cumulative and perpetual impacts it has caused.

4.1. Climate policies that must extend beyond cutting greenhouse gas (GHG) emissions and actively fund just mine closures

““It is not the climate, it is life.”

Censat Agua Viva

In its 2022 annual report, Glencore says it is committed to responsibly managing the decline of its coal portfolio, in line with its targets to reduce polluting emissions by 15% and 50% by the end of 2026 and 2035, respectively. To achieve this, its planning includes the closure of at least 12 coal mines between 2019 and 2035. As part of this, it has reported the safe closure of Calenturitas and La Jagua mines in Colombia, and the Lagisa mine in South Africa. Yet, at the same time, the company is planning to open new thermal coal mines in Australia.[44]

That being said, how does the transnational corporation understand the idea of safe and responsible closures if, with the untimely exit of Prodeco–a Glencore subsidiary active in Colombia’s Cesar department–it failed to address the cumulative impacts resulting from decades of mining activities?

As of today, the closure process is in the liquidation phase, during which the Agencia Nacional Minera (National Mining Agency-ANM) verifies compliance with environmental obligations and only upon completion issues a certification to the company. It is worth noting that the updated Plan de Manejo Ambiental (Environmental Management Plan) including its section on closure was only submitted by Prodeco in 2021, after more than 14 communities filed a ‘tutela’ action. This led to a ruling by the Valledupar administrative court (2022) demanding that the State and the company convene a dialogue table to discuss and share the mine closure plan (El Espectador, 2022).

Of course, once the outstanding social and environmental obligations have been met,[45] Glencore will be able to

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44. https://www.accr.org.au/downloads/accr_glencoreupdate_sept2023.pdf

45. Compensation for environmental liabilities related with and caused by forest use permits, loss of biodiversity and biotic components, rehabilitation of affected areas such as dumps that have reached maximum levels, rehabilitation of water sources such as Arroyo Caimancito, environmental management of used tyres, water management and control, the resettlement of Hatillo, socio-economic management plan of Boquerón and social management reports, among other obligations (Grupo Prodeco, 2022).

argue that it has fulfilled all the requirements to permanently exit Cesar. However, it does not envisage taking responsibility for other social, environmental and community health impacts.

In fact, before its complete acquisition of Carbones del Cerrejón, Glencore assessed the assets and liabilities on the company's books and concluded that such an acquisition was prudent (Glencore, 2023). However, its assessment did not include environmental liabilities, cumulative impacts and perpetual damages. As a result, according to the figures in Glencore's 2022 annual report, the acquisition represented a bargain purchase gain of $1,029 million (Glencore, 2023).



Figure 22. Dead tigrillo in the middle of Arroyo Bruno's natural watercourse, metres from the 'plug' installed by the company to divert the stream. Source: Javier de la Cuadra (2019).

4.2. A mine closure plan that deepens social and environmental injustices

"There are damages, for example, to our dreams. How can they be fixed?

The ouutsü[46] have disappeared. How can that be fixed?

Because this talk of a few million isn't going to fix it."

Female Wayuu leader from the '4 de noviembre' indigenous reservation (2022)

The company's mine closure strategy is outlined in its current Plan de Manejo Ambiental Integral (Integrated Environmental Management Plan–PMAI) and the preliminary closure plan approved by the National Environmental Licensing Authority (ANLA) (Cerrejón, 2023a), as well as the more recent draft mine reversal and closure plan, which is currently being reviewed by ANLA (2023). After decades of lucrative profit by transnational corporations, and by Glencore in particular, who will be accountable for the cumulative and perpetual impacts in the territory of La Guajira in 2034, when the mining contract ends?

The draft closure plan takes it for granted that the PMAI is being achieved and that, as such, all that will be required in 2034 are some basic mine closure and reversal operations to return the infrastructure to the State, including the prevention of damages that may be caused by the closure. However, as already noted, neither the company nor state bodies have complied with court rulings from 2012 to 2019 in favour of protecting the rights of communities affected by Carbones del Cerrejón's activities (Cajar, 2022).

With the impending closure of the mine, there is a risk that social and environmental injustices will be exacerbated, and with them the impunity in which the company has been operating. It should also be noted that there is no mention of social impacts in the closure plan, which focuses primarily on biotic and physico-chemical aspects. For example, the health impacts on Wayuu and Afro-descendent communities resulting from air, water and soil pollution are not considered.[47]

Furthermore, the company does not include perpetual impacts in its closure plan, arguing that there are still 11 years remaining before the end of the contract and therefore they cannot define any impacts that might occur or possible response measures. However, there have been studies looking at perpetual impacts in the context of mega-mining which argue for the need to take such impacts into account in planning for mine closure and post-closure (Ángel, 2019).

Water acidification resulting from acid mine drainage and the modification of the landscape are among the most studied of these impacts, but there are also social impacts, such as health damages, as well as inestimable cultural and spiritual effects for the people who live in the territory (Caro & Portela, 2022; Censat, 2023). The failure to acknowledge these impacts results in social and environmental liabilities[48] which end up being paid for by the State.

The risk of this occurring is evident in the draft closure plan, in that Carbones del Cerrejón does not present adequate timeframes for post-closure. The preliminary plan refers to a timeframe of five years (Cerrejón, 2015), which is insufficient given the intense requirements associated with this stage. Now, in the updated version of the document, no specific timeframe is proposed and the reversal and post-closures phases overlap (as shown in Figure 24). The assumption is that these

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46. The ouutsüs are older women who guide the community based on their dreams, helping to resolve conflicts and heal disease. Controlled explosions in the mine have caused this gift to be disrupted as a result of insufficient rest and sleep (Garcia et al., 2015).

47. https://www.rosalux.org.ec/carbon-toxico/

48. Environmental liabilities are "geographically located and demarcated negative environmental impacts that were not mitigated, compensated, corrected or remedied in an adequate or timely manner; caused by human activity and that can cause risks to human health and the environment." (quote) available at http://leyes.senado.gov.co/proyectos/index.php/proyectos-ley/cuatrenio-2022-2026/2022-2023/article/241-por-medio-de-la-cual-se-establecen-la-definicion-oficial-la-tipologia-y-los-mecanismos-para-la-gestion-de-pasivos-ambientales-en-colombia-y-se-dictan-otras-disposiciones



Figure 23. Drainage pond between the Cerrejón complex boundaries and the Wayuu reservation of Provincial, Barrancas, La Guajira. During the winter season this pond fills with water contaminated by mining. Source: online series Still Burning (2020).

phases are one and the same, when in fact they are technically distinct processes.

The proposed timelines are unclear and, even though certain measures are mentioned, such as the development of an analytic hydrogeological model that includes conditions following cessation of operations (Cerrejón, 2023b), there are no corresponding indicators of success. As such, parameters that can be measured and monitored still need to be defined.

In its 2022 Sustainability Report (Cerrejón, 2023a), the company reports a series of achievements with regard to progressive closure, mainly relating to work rehabilitating areas of formerly mined land. According to the report, 4,854 hectares have been rehabilitated to date. However, these figures are at odds with the perceptions of several leaders in the affected area, who question the quality of the rehabilitation process, highlighting that soil infertility and the measures employed impede the

PLANEACIÓN DEL CIERRE					Finalización contratos 2034	CIERRE	
Fase planeación del cierre	Plan preliminar	Plan borrador	Plan detallado	Plan final		Reversión	Poscierre
Tiempo al cierre (años)	25 – 15	15 – 10	10 – 5	5 – 0		1 año	Hasta alcanzar indicadores de éxito
Año estimado de presentación del Plan actualizado*	2016	2023	2028	2033			
Fase ejecución del cierre	Cierre progresivo y poscierre					Reversión	

* Corresponde al año estimado, pero podría presentarse antes.

Figure 24. Closure planning cycle and phases. Source: Cerrejón (2023b), Draft mine closure and reversal plan.

cultivation and preservation of native species with deep roots that are essential to restoring ecological relationships in the region (Censat, 2023). ANLA has also made requests of the company due to inconsistencies in its rehabilitation programme.[49]

An **approach of comprehensive reparation of a territory during the closure phase** is a prerequisite for just and participatory socio-environmental transition (Censat Agua Viva, 2018; Censat Agua Viva, 2023). This approach relies on the company taking responsibility for the cumulative and perpetual impacts it has caused, comprehensively addressing social and environmental conflicts resulting from its mining activities and enabling compensation for human rights violations of communities that live in region (Censat Agua Viva, 2023). For this to happen, the company, in line with its responsibilities, must also establish optimal financing mechanisms to meet its reparation commitments and implement the required closure and post-closure activities. The current closure plan lacks budgetary allocations to that effect.



Figure 25. Annex mining pit owned by Carbones del Cerrejón. Source: Cinep (2023).

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49. According to information provided by ANLA in response to a right of petition (2022), the body has made a number of requests of the company related to its rehabilitation programme. For example, they have requested the development of appropriate indicators to enable them to evaluate the effectiveness of rehabilitation, clarifications regarding information on re-forested areas, and the resumption of stabilization stages where these have been ineffective, among other things (Censat, 2023). These observations call into question the results demonstrated by the company.

5. Conclusions

The inhabitants of La Guajira who report on and testify about serious human rights violations and the impacts of mining activity have been targeted by illegal groups and suffered threats and attacks. Neither Carbones del Cerrejón nor Glencore have publicly acknowledged this situation,[50] and no court has issued a judicial measure to address it.

Despite rulings issued by the Colombian Constitutional Court, impunity for land dispossession, development-induced displacement and failed resettlement of forcibly displaced communities in La Guajira persists. There is no public acknowledgement from Glencore or Carbones del Cerrejón regarding the harm caused by their mining operations, let alone the resulting cumulative, irreparable and perpetual impacts.

There are also no effective reparation mechanisms in place for affected communities. Existing mechanisms that aim to address abuses by businesses are voluntary or non-judicial in nature, and are thus symbolic and ineffective. There is an absence of a dedicated court or mechanism supporting access to justice and demands for comprehensive reparation in relation to the responsibilities of transnational corporations, while recourse to the OECD National Contact Points proves fruitless. Existing legal systems lack a suitable mechanism to hold companies accountable. Attempting to prosecute them is excessively costly, complex and fraught with power imbalances, particularly in the pursuit of genuine and effective access for La Guajira's Wayuu and Afro-Colombian communities, the main victims of abuses, who are historically marginalized, excluded and poor.

Open-pit coal mining by Carbones del Cerrejón Limited has dramatically transformed the hydro-social landscape of the middle Ranchería river basin. The cumulative impacts of mining operations on water sources have led to changes in the hydrological cycle in a region highly vulnerable to climate crises. This is directly linked to the humanitarian crisis the department is facing as a result of water shortages. Furthermore, heavy metals have been detected in water sources affected by coal mining, threatening the protection of the fundamental rights to water, health and food sovereignty.

The energy transition scenario has entailed political and economic disputes. This global process demands that a reduced dependency on fossil fuels be coupled with the closure of coal mines accompanied by comprehensive reparations–not their irresponsible abandonment, evading obligations to redress socio-environmental injustices.

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50. See https://rutasdelconflicto.com/notas/2022-cuatro-paises-latinoamerica-concentraron-el-mayor-numero-ataques-defensores-informe#:~:text=Los%20pa%C3%ADses%20con%20m%C3%A1s%20casos,homicidio%20de%2018%20l%C3%ADderes%20ind%C3%ADgenas.

6. Recommendations

6.1. Glencore

- It is fundamental that Glencore commits to consistent action with regard to just energy transition and takes responsibility for a process of comprehensive reparation of areas affected by its operations. To achieve this, it must:
  - o Include in its climate policy funding to pay for mine closures that ensure environmental, social and climate justice, fully assuming the costs of cumulative impacts and possible perpetual impacts due to human rights violations, as well as the environmental damage caused by its mining activity.
  - o Evaluate the possibility of promoting the creation of trusts by its subsidiaries as a mechanism to fund mine closure, so that, through them, they can generate annual and ongoing returns to fund their perpetual obligations.
  - o Transition to post-extractive scenarios in which coal mining is limited, in line with international recommendations.
  - o Internalize cumulative and perpetual impacts, so that they do not become environmental liabilities, or the costs are not transferred to the Colombian State. This includes socio-environmental impacts, which go completely unacknowledged in its closure plan.
  - o Plan adequately for the post-closure phase, which should be differentiated from the closure phase and the reversal process, so that necessary measures can be defined to control and monitor long-term and perpetual impacts, and funding sources can be secured for that purpose.
- Glencore's investors should ensure that the evaluation and update of the company's climate policy includes these recommendations and is in keeping with climate recommendations by international institutions.
- Bearing in mind Glencore's existing climate commitments, we urge it to drop the claim it has filed against the Colombian State with the International Centre for the Settlement of Investment Disputes (ICSID) regarding the Constitutional Court's ruling on protecting Arroyo Bruno and suspending coal mining in the La Puente pit. This claim[51] is inconsistent with its climate obligations, because it demands that the Colombian State pay Glencore millions of dollars for the State fulfilling its obligation to protect the water rights of marginalized indigenous and Afro-Colombian communities.

6.2. Coal buying countries

- It is the responsibility of European Union (EU) Member States that have adhered to and ratified the Paris Agreement, and more recently the Glasgow Climate Pact (COP26), which is binding on States Parties, to take robust climate measures to discourage national contributions to global warming. This includes disincentivising and regulating the coal business.
- We call on EU Member States and countries that buy Colombian thermal coal to contribute to the financing of public policies and energy transition programmes in Colombia, given their responsibilities and debts to the country for regularly purchasing coal that is a product of human rights violations and

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51. See Investment Policy Hub. (2021). Investment Dispute Settlement Navigator: Glencore v. Colombia (III) – Glencore International A.G. v. Republic of Colombia (III) (ICSID Case No. ARB/21/30). https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/1122/glencore-v-colombia-iii-

environmental sacrifice. Thus, considering issues of comprehensive justice and reparation in a context of transition, funding should not only be earmarked for the promotion of renewable energies, but most of all for ensuring just mine closures in the coal region.

- Both EU Member States and countries across the world that buy coal mined in Colombia should reassess and include entire supply chain risk analyses in their external trade relations policies, with the aim of preventing situations in which socio-environmental cycles and relations are seriously harmed or altered.

6.3 The Colombian Government should:

- Take the lead in discussions about the Binding Treaty on business and human rights being promoted by several civil society organizations.
- Develop measures that provide comprehensive reparation to communities affected by coal mining, including truth, justice, reparation and guarantees of non-repetition, by means of structural changes to the country's mining-energy model.
- Guarantee respect for the communities surrounding Glencore's operations, through strict compliance with Constitutional Court rulings and the adoption of UN recommendations.
- Investigate and identify actors that are threatening, attacking and harassing leaders protesting mining projects.
- Enshrine the principles of consultation and free, prior and informed consent and develop a comprehensive regulation to ensure their fulfilment.
- Include a definition of perpetual impacts in Colombian law, specifying obligations and mechanisms to address them.
- Define precise timeframes and funding, oversight and monitoring mechanisms for the closure and post-closure phases.
- Improve the oversight and monitoring mechanisms of relevant entities, to enable a rigorous assessment of activities implemented by companies during progressive closure, closure of operations and the post-closure phase.
- Promote appropriate and binding participation mechanisms in which the right to access timely information is respected and the right to review is included, so that affected communities can contribute to planning for the future use and management of their land.
- Maintain and make concrete the aim of implementing a just energy transition, in which the outcome does not end up being the expansion of the energy network, but instead efforts are directed towards substantively changing the prevailing development model, so that it prioritizes people's welfare and sovereignty. It follows that La Guajira must cease to be a sacrifice and experimentation zone for capital now being redirected to the widespread adoption of wind and photovoltaic energy, offering no benefits to the local population.

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Does Cerrejón always win?

Between corporate impunity for human rights violations and the search for comprehensive reparation in times of transition

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